

Sumter City-County Board of Zoning Appeals

January 11, 2012

BOA-11-27, Longleaf Drive Mining Operation Access, D&L Properties (County): Part II Variance

Variances from Sections 3.n.3.b, in order to provide commercial access to a mining operation via a residential access street (Longleaf Dr.) and to allow a mining operation within 300 ft. of a residential use.



Appeals - Variance - Special Exception

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BOA-11-27 Longleaf Drive Mining Operation Access, D&L Properties (County): Part II Variances

I. THE REQUEST

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| Applicant: | D&L Properties |
| Status of the Applicant: | Property Owner of Mining Operation |
| Request: | Variances from Sections 3.n.3.b, in order to provide commercial access to a mining operation via a residential access street (Longleaf Dr.) and to allow a mining operation within 300 ft. of a residential use |
| Location: | End of Longleaf Dr. cul-de-sac |
| Present Use/Zoning: | Undeveloped/Agricultural Conservation (AC) |
| Tax Map Reference: | 181-00-01-003 (the private drives are represented by numerous adjacent tax map numbers) |
| Adjacent Property Land Use and Zoning: | North – Floodplain/AC South – Residential/AC East – Residential/AC West – Residential/AC |

PART II Variances

II. BACKGROUND

Property owner and applicant, D&L properties, propose to develop a Sand and Dirt Mining operation on a 4.98 acre portion of a 137.52 acre tract identified as tax map 181-00-01-003 (the “Property”). The Property is located north of Cains Mill Rd., and north of two private roads named Newlevy Dr. and Follin Dr. The Property is east of Bar-zee Drive and west of Longleaf Drive.

The applicant proposes to operate a sand and dirt mining operation consistent with SIC 14, Mining & Quarrying of Non-metallic minerals. This use is listed as a conditional use in the AC Zoning District. Conditional Use and Site Plan applications are required and were submitted on December 1, 2011. These applications are under review by Planning Staff and should be considered independent from the requests contained in BOA-11-27. The applicant has stated that

the mine would serve construction sites in the area, be open for at least 4 years, and generate an estimated 72 truck trips per day.

The Applicant proposes access for the mining operation via Longleaf Dr., a residential access street. Under Section 3.n.3.b of the Zoning Ordinance a mining operation must obtain its access via a Collector or Arterial. Longleaf Dr. does not meet the criteria for a collector. As such, a variance is required.

In addition, the mining operation access is within 300 feet of a residential property. Section 3.n.3.b requires that no mining operation be within 300 feet of a residential use. Thus, a variance is required for this section.

III. Variance Requests

In order to provide access to the proposed mining operation via Longleaf Dr., several variances are necessary. They are variances from Sections 3.n.3.b.:

Standard: Section 3.n.3.b. states : ***b. Mining & quarrying of nonmetallic minerals** (Note: a reclamation and reuse plan must accompany a zoning permit, an approximate operating schedule including times when explosives will be used must be presented, no such use shall be located within 300 feet of any residential use, no explosives shall be used within 2,500 feet of a residential structure unless a variance is obtain (sic) from the Planning Commission on a case by case basis, **the site must obtained (sic) its highway access from a collector or an arterial street,** mining and extraction uses permitted by South Carolina Department Health Environmental Control, Division of Mining & Reclamation, which are non-conforming and any extension of such use, operations, activities, or business on such parcel or contiguous parcel where the minerals or the surface rights which are under the same ownership or control on the date of passage of this ordinance shall be exempt from the requirements of this section);*

Staff Comment: A variance is required to allow access from a road other than a collector/arterial. A variance is also required from the 300 foot separation requirement as the private drive (which will functionally act as a commercial driveway) lies within 300 ft. of several residences, passing between properties.

IV. FOUR PART TEST

Under the Zoning Ordinance Section H and Section 6-29-800 of the State Code of Laws, a variance may be granted by the Board of Appeals in the individual case of unnecessary hardship if the Board makes and explains in writing all of the following:

- 1) **There are extraordinary and exceptional conditions pertaining to the particular piece of property.**

There are no extraordinary or exceptional conditions pertaining to the property. The property is zoned Agricultural Conservation (AC), is over 137 acres in size, and is subject to the Zoning and Development Standards Ordinance.

The Applicant cites that failure to grant the variance will prevent mining operations historically conducted on site. For the record, we find no application or approval of a mining operation on this site in department records.

2) These conditions do not generally apply to other property in the vicinity.

There are no extraordinary or exceptional conditions present. The Zoning Ordinance applies equally to all AC zoned parcels.

3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

The Zoning Ordinance permits a full slate of permitted, conditional, and special exception uses in the AC zoning district. The Zoning Ordinance does not effectively prohibit or unreasonable restrict use of the property.

4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.

The authorization of a variance will be a substantial detriment to adjacent property and to the public good. Moreover, a granting of the variances requested will harm the character of the district.

The applicant proposes to use Longleaf Dr., a residential access street to serve a future non-metallic mining operation. We find the intent of the zoning ordinance clear: access for such an intensive commercial operation requires direct access to a collector or arterial. Collectors and arterials are engineered and designed to transmit residential and commercial traffic.

Allowing 72 truck trips per day for a minimum of four years will have a significant detrimental effect on surrounding property owners. The surrounding area is of a residential character. Dump trucks filled with dirt are the antithesis of this rural residential character. Longleaf Drive serves more than 66 residential properties. Truck operations through this neighborhood will almost certainly harm the character of the district.

When reviewing a variance request, the Board may not grant a variance that would do the following:

- **Allow the establishment of a use not otherwise permitted in a zoning district;**
- **Extend physically a nonconforming use of land;**
- **Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.**

The fact that a property may be utilized more profitably should a variance be granted shall not be considered grounds for approving a variance request.

V. DRAFT MOTIONS for BOA-11-27, Part II, Variances

- A. I move that the Zoning Board of Appeals deny BOA-11-27, subject to the findings of fact and conclusions of law attached in Exhibit 1.
- B. I move that the Zoning Board of Appeals enter an alternative motion for BOA-11-27.

VI. BOARD OF ZONING APPEALS - JANUARY 11, 2012

Voted to deny BOA-11-27 – Part II Variance subject to the findings of fact and conclusions of law as set forth in the Order of Variance (exhibit 1).

Attachments

- 1. Applicant Position/Submission

Exhibit 1
Order on Variance Application
Sumter Board of Zoning Appeals

BOA-11-27 Longleaf Dr. Mining Operation Access
Part II:
Variance Request
January 11, 2012

Date Filed: January 11, 2012

Permit Case No. BOA-11-27

The Sumter Board of Appeals held a public hearing on Wednesday, January 11, 2012, to consider the variance requests of D&L Properties, specifically from Section 3.n.3.b of the Zoning Ordinance, in order to provide commercial access to a mining operation via a residential access street (Longleaf Dr.) and to allow a mining operation within 300 ft. of a residential use.

After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions:

Facts:

- Appellant proposes to construct a mining operation on 4.98 acre portion of a 137 acre parcel identified as tax map 1810001003.
- The Applicant proposes to obtain access to the site via Longleaf Dr., classified as a residential access street.
- Access will bring the mining operation within 300 ft. of residential uses.
- A mining operation is a conditional use in the Agricultural Conservation (AC) Zoning District. One condition for approval requires that access be obtained from a collector or arterial.

Conclusions of Law:

1. The Board concludes that Applicant ☐ **has** - ☒ **does not have** an unnecessary hardship because there are no extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

There are no extraordinary conditions on this property. This 137 acre parcel is zoned agricultural conservation.

2. The Board concludes that these conditions ☒ **do** - ☐ **do not** generally apply to other property in the vicinity based on the following findings of fact:

These conditions do apply to other property in the vicinity. The adjacent parcels must also adhere to the same development standards, are subject to the same zoning and access standards as contained in the zoning ordinance.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☐ **would** - ☒ **would not** effectively prohibit or unreasonably restrict the utilization of the property based on the following findings of fact:

The conditions imposed on this property do not effectively prohibit or unreasonably restrict the use of the property. The Agricultural Conservation Zoning districts allows dozens of permitted, conditional and special exception uses.

4. The Board concludes that authorization of the variance ☒ **will** - ☐ **will not** be of substantial detriment to adjacent property or to the public good, and the character of the district ☒ **will** - ☐ **will not** be harmed by the granting of the variance based on the following findings of fact:

The authorization of a variance will be a substantial detriment to adjacent property and to the public good. Moreover, a granting of the variances requested will harm the character of the district.

We find the intent of the Zoning Ordinance clear: access for such an intensive commercial operation requires direct access to a collector or arterial. Collectors and arterials are engineered and designed to transmit residential and commercial traffic.

Allowing 72 truck trips per day for a minimum of four years will have a significant detrimental effect on surrounding property owners. The surrounding area is demonstrably of a low density, residential character. Dump trucks filled with dirt are the antithesis of this residential character

Allowing commercial access via and through a residential neighborhood contradicts the intent of the Zoning Ordinance. The precedent of such a decision will have long lasting negative impacts on Sumter County.

THE BOARD, THEREFORE, ORDERS that variance requests are ☒ **DENIED** - ☐ **GRANTED**

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.